



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Order 96-6-12

Issued by the Department of Transportation
on the 30th day of May, 1996

SERVED JUNE 10, 1996

U.S.-Brazil All-Cargo Service Proceeding

Docket OST-95-316

FINAL ORDER

Summary

By this order we finalize our tentative findings and conclusions set forth in Order 96-3-39. We issue certificates of public convenience and necessity for primary authority to (a) American International Airways, Inc. to conduct scheduled all-cargo service between Miami and Brazil and (b) Polar Air Cargo, Inc. to conduct scheduled all-cargo service between the coterminal points Miami and Los Angeles and Brazil, and (2) issue backup certificates to (a) Southern Air Transport to conduct scheduled all-cargo service between the coterminal points Miami and Los Angeles and Brazil and (b) Tower Air, Inc. to conduct scheduled all-cargo service between Miami and Brazil. We also allocate the required frequencies to conduct the operations authorized, deny the applications of the remaining applicants in this proceeding, and impose a dormancy condition on all incumbent and newly-allocated frequencies.

Background

By Order 95-7-13, as modified by Order 95-8-15, the Department instituted the *U.S.-Brazil All-Cargo Service Proceeding*, to select the third and fourth carriers to provide scheduled all-cargo services in the U.S.-Brazil market and to allocate 9.5 weekly frequencies available for these services, 6.5 of which were immediately available and 3 of which were available April 1, 1996.

Eleven carriers fully prosecuted their applications for the two available route opportunities: American International, Amerijet, Arrow Air, Challenge Air Cargo, Evergreen International, Fine Airlines, Florida West, Millon Air, Polar Air Cargo, Southern Air Transport, and Tower

Air.¹ By Order 96-3-39, we tentatively selected American International Airways, Inc., (AIA) and Polar Air Cargo, Inc. (Polar) for primary authority and Southern Air Transport, Inc. (Southern) and Tower Air, Inc. (Tower) for backup authority.

Answers to the Department's order were due March 28, 1996, and replies, April 2, 1996.²

Responsive Pleadings

Amerijet International, Inc. (Amerijet), Evergreen International Airlines, Inc. (Evergreen), Millon Air, Inc. (Millon), and Southern filed objections to the Department's show-cause order. Amerijet, AIA, and Polar filed answers to the objections. Southern filed a reply to AIA's answer, and AIA filed a surreply to Southern's reply.³

The narrow-body applicants, Amerijet and Millon, object to the Department's decision not to select a narrow-body carrier for U.S.-Brazil service, arguing that the Department did not adequately consider all relevant material submitted in this proceeding. Two wide-body applicants, Southern and Evergreen, object to the Department's decision to select the other wide-body applicants, AIA and Polar, for primary awards and Tower for a backup award. Southern states that with its greater capacity it should have precedence over AIA, and Evergreen states that since we proposed an allocation to Polar of three frequencies rather than the five that it had requested, Polar's service is not assured. Evergreen also states that it should have been selected over Tower for a backup award. We provide a more detailed description of the responsive pleadings in the attached appendix.

Decision

After careful consideration of all matters raised in this proceeding, we have decided to make final our tentative findings and conclusions set forth in Order 96-3-39, awarding primary authority to American International Airways and Polar Air Cargo and backup authority to Southern Air Transport and Tower Air.

This proceeding represents the first opportunity we have had in several years to authorize additional scheduled all-cargo carrier services into the U.S.-Brazil market. The U.S.-Brazil market is one of the largest U.S.-South America markets, second only to the U.S.-Colombia market, and, as we noted on our show-cause order, it continues to grow at a significant rate.⁴

¹ DHL and World Airways also filed applications, but subsequently withdrew their applications.

² The Department's order also directed Polar Air Cargo to inform the Department no later than March 25, 1996, as to whether it would operate services to Los Angeles, Chicago, New York, and Miami with the three weekly frequencies we proposed to award Polar. By letter dated March 21, 1996, Polar stated that it will operate services between points in Brazil, on the one hand, and Los Angeles, Chicago, New York, and Miami, on the other hand, and that because it was tentatively awarded fewer frequencies than requested, it will reduce its services proportionately and restructure them accordingly to reflect its award.

³ Both Southern and AIA accompanied their pleadings with separate motions for leave to file otherwise unauthorized documents. To facilitate having as complete a record as possible in this case, we will grant both motions.

⁴ Order 96-3-39 at 4.

Yet, overall U.S. carrier designations and frequency levels remain bilaterally constrained, accentuating the importance of securing the maximum benefit from the services provided.

Currently, two scheduled U.S. carriers provide services in the market-- Federal Express and Challenge Air Cargo--and three U.S. combination carriers provide belly cargo capacity on passenger flights (American, United, and Tower). In addition, several U.S. carriers operate charters in the U.S.-Brazil market.

Foreign-flag carriers provide cargo services in the market as well, including the largest Brazilian carrier, Varig, which provides both all-cargo and combination services in various markets through the Miami, New York and Los Angeles gateways. In fact, it is the only carrier providing all-cargo services from Los Angeles, and it operates more all-cargo flights from all three gateways than any other U.S. or foreign carrier. Lloyd Aereo Boliviano, a Bolivian carrier, also provides all-cargo services between Miami and Brazil. Transbrasil and VASP, two other Brazilian carriers, offer belly cargo service on their combination services. Korean Air Lines provides combination services with belly-cargo capability in the Los Angeles-São Paulo market.

It is against this background that we considered the applications and evaluated the service and competitive benefits of each carrier's proposal against our carrier selection criteria for the case.

In our show-cause decision we tentatively found that because the U.S.-Brazil cargo market was large and growing, there was a need for wide-body aircraft service and that our awards here should be to the wide-body applicants. Having reached that determination, we tentatively concluded, after careful review of the wide-body proposals in light of the evidence presented and our selection standards, that the proposals of AIA and Polar offered the greatest public benefit. In this regard, we noted that the AIA and Polar proposals would provide improved services to more cities than the proposals of any of the other wide-body applicants and, thus, would provide shippers with the most effective alternative to existing services, and that the AIA and Polar proposals would provide the most significant contribution to competition in the market.

Having carefully reviewed the pleadings filed in response to our show cause order, we find no persuasive basis to reach a different result.

Looking first to the threshold issue of wide-body versus narrow-body frequencies, we continue to believe that in the large and still growing, but at the same time frequency-constrained, U.S.-Brazil market, wide-body service represents the optimum use of our limited rights. The wide-body carriers we are selecting here offer more available capacity per frequency, particularly in the major markets, and more total capacity overall even with fewer frequencies flown. In reaching our result, we reviewed all aspects of their evidentiary submissions and supporting arguments but nevertheless determined that the public interest

avored an award to wide-body carriers.⁵ As we stated in our show-cause order, the U.S.-Brazil market supports wide-body aircraft services. Moreover, our bilateral aviation agreement with Brazil puts a premium on aircraft size because it limits the number of frequencies that can be operated in the market, and we consider this consideration an important advantage.⁶ We emphasize, however, that while narrow-body applicants were not selected here, these carriers may still participate significantly in the market under the expanded U.S.-Brazil charter regime which permits operation of 450 round trip charters per year.⁷

As to the question of which wide-body carriers we should select, with the exception of Evergreen, the commenters directed their objections to our selection of AIA rather than to our selection of Polar. Regarding AIA, we believe, and no party has persuaded us otherwise, that AIA has demonstrated the most effective proposed use of scheduled U.S.-Brazil all-cargo authority. Neither Southern, nor any other applicant, has demonstrated any error in our findings that AIA would serve more cities and that the shipping public would benefit from its integrated intermodal network. While opponents argue against the “hub” system and the behind gateway service AIA will provide, none is able to duplicate those precise advantages.

AIA would operate single-plane service to Miami and New York, the two largest U.S.-Brazil cargo markets. Furthermore, AIA’s overnight heavy cargo hub at Terre Haute links nearly 50 cities in the U.S. with its intermodal network, greatly expanding access to the United States by shippers. Its midwest location affords a new section of the country, the midwest and the midsouth, with a new service option through an integrated carrier network. Indeed, other applicants have acknowledged the value of a network to improve service to the shipping public.⁸ While Southern has maintained that AIA’s behind gateway service is inconsequential because that service generates only approximately six percent of AIA’s overall traffic forecast, that traffic is six percent *more* than Southern or any other applicant would provide on-line to the midwest and midsouth areas, which currently do not enjoy direct all-cargo services to Brazil. Moreover, as AIA has noted, although its initial market share may be small, approximately 35 percent of the traffic originates from cities on the American International Freight (AIF) system. AIA contends plausibly that it can expect its small percentage to grow in an overall market that is growing substantially.⁹ Nor are we persuaded by Evergreen’s suggestion that AIA’s service at its Terre Haute hub may have diminished due

⁵ We are unpersuaded by Millon’s arguments that its proposal was misrepresented or not given adequate consideration. The Department fully acknowledged that Millon’s proposal included a variety of potential aircraft to be used, showed weekly frequencies to be used on proposed operations over two routings with one of three aircraft proposed, and included an array of cargo, expense and revenue possibilities based on those aircraft. Millon’s proposal was not specific, however, as to which exact aircraft it would use on any one routing. (Order 96-3-39, Appendices A and B.) The fact remains that Millon presented a narrow-body aircraft proposal and noted that it was trying to acquire a wide-body aircraft which, once obtained, could be used. (Millon Direct Exhibits MIL-D-9 and Brief at 4).

⁶ Order 96-3-39 at 4 and 5.

⁷ Order 96-3-39 at 6.

⁸ Amerijet April 2, 1996 Answer at 5.

⁹ AIA April 2, 1996 Answer pp 6-7. AIF is the “American International Freight” division of AIA, which was created to operate overnight heavy cargo services. AIA states that AIF moves over three million pounds of freight per week. (AIA Directs, AIA-102 at 3 of 5)

to the loss of Roadway Global Air, one of its major customers. The record shows that since Roadway's demise, AIF has averaged 875,000 pounds nightly at Terre Haute, whereas previously, when it was affiliated with Roadway, AIF averaged only 600,000 pounds nightly.¹⁰

The objecting parties have also argued that air freight forwarders provide the same service benefits as AIA's integrated intermodal services. To the contrary, we see AIA's integrated system as presenting some distinct advantages. As noted above, AIA has at its disposal the nationwide on-line cargo collection and distribution facility of the American International Freight system (AIF) at Terre Haute. This system operates an overnight heavy-freight operation linking nearly 50 U.S. cities with a combination of direct air and trucking services, and it is specifically designed for collecting and distributing cargo speedily throughout the United States. As AIA notes, it can provide expedited overnight delivery of heavy cargo through the Terre Haute hub using its operating subsidiary, AIF, thereby providing shippers, producers and exporters from around the nation with fast, convenient single-carrier service and first direct main-deck heavy cargo service to Brazil. It thus offers a meaningful competitive alternative for shipping cargo between the United States and Brazil.¹¹

Forwarders continue to offer a valuable means of generating and moving traffic. Indeed, our selections in this case recognize the valuable benefits that forwarder and integrated carrier services provide. AIA offers the benefits of improved access to numerous cities through its integrated intermodal network and Polar offers service to additional cities, relying on traffic from air freight forwarders.¹² Thus, we believe our combined selections of AIA and Polar offer the shipping public the greatest range of service options and benefits.

Evergreen has argued that its proposed gateway-to-gateway service from New York is superior to the proposals of AIA and Polar. Evergreen further maintains that New York is the largest U.S. market without direct service and that the markets that AIA and Polar propose to serve are smaller points and thus their proposals do not offer comparable service benefits to Evergreen's proposal. We disagree. Both AIA and Polar propose to serve New York. Indeed, AIA proposes to operate three weekly round trips to New York behind Miami, whereas Evergreen only proposes to operate one weekly nonstop round-trip flight to New York, coupled with service in only one direction on its two remaining weekly flights. Polar for its part has indicated that, notwithstanding our award of three frequencies rather than five, it still will serve all cities on its service proposal, including New York. Taking into account the New York services that AIA and Polar will provide, along with the overall broader service benefits deriving from their proposals, we do not see Evergreen's New York proposal as justifying a different result in this case.

We also believe that the broad benefits offered by AIA and Polar make their proposals preferable to the proposal of Southern for primary carrier authority. Thus, we are not persuaded by Southern's argument that it should be selected for primary authority over AIA

¹⁰ AIA April 2, 1996 Answer at 10.

¹¹ AIA Direct Exhibits T-2, T-3, -103, -104, -105, -200. AIA April 2, 1996 answer at 6-10.

¹² Polar Direct Exhibits PO-200, PO-300; Rebuttals PO-RT-1 at 6; Brief pages 9-11.

because it offers the same number of frequencies but greater overall capacity. While we clearly find a need for the much greater capacity available from wide-body carriers in this proceeding, numerical comparisons of space/weight aircraft capacity are not the only aspect of our analysis. Rather, our focus is on maximizing overall public benefits. The combination of the proposals of AIA and Polar clearly provide those benefits. At the outset, we note that the frequency count is not in fact equivalent. As our show-cause order noted, AIA will provide 6.5 weekly frequencies to Brazil whereas Southern will only offer six weekly frequencies, with one flight from Los Angeles being offered only every other week, more analogous to charter service. Excluding Southern's biweekly service on one of its proposed routes, AIA's weekly capacity, in fact, exceeds Southern's for the U.S.-Brazil local market. More important though, both AIA and Polar devote greater capacity (60+%) for Brazil-U.S. services on the northbound legs of their proposals, in contrast to Southern which offers less than 25%.¹³ While we believe that the needs of U.S. shippers to Brazil should be given primary consideration, we also believe that the interests of U.S. consignees served by Brazilian shippers should also be considered, and here again the proposals of AIA and Polar are superior. Given AIA's and Polar's improved service to more U.S. cities together with AIA's integrated intermodal network, we find that the combined benefits of their proposals outweigh Southern's argued advantage of marginally gross aircraft capacity.

Southern has also argued that AIA will not be able to implement its service proposal regarding Colombia because of potential problems in obtaining authority from the Colombian Government. Both AIA and Southern's proposals will require additional authority from the Colombian Government.¹⁴ In these circumstances, Southern has no advantage over AIA. Furthermore, AIA has stated that if authority from Colombia is not forthcoming, it could still operate its proposal by overflying Colombia.¹⁵ As noted above, Southern's proposal is more dependent on Colombian traffic than is AIA's.¹⁶ Therefore, we do not conclude that this issue warrants reversal of our selection of AIA.

For the reasons listed above, we believe that the selection of AIA and Polar will best maximize the public interest and that they should receive the primary awards in this proceeding.

Backup Awards

We have decided to affirm our selection of Southern and Tower as backup carriers in this proceeding. No carrier has presented arguments to lead us to a different result.

¹³ Southern Direct Exhibits SAT 321-322; AIA Direct Exhibits AIA-404, and AIA-301 (as corrected 9/13/95) and Polar Direct Exhibits PO-301, PO-404.

¹⁴ AIA Brief at 13-14 and AIA April 2, 1996 Answer at 12. Also, Southern acknowledges that it would require additional authority from Colombia to conduct scheduled services on a U.S.-Brazil-Colombia routing. Reply of Southern, April 9, 1996, at footnote 2. Moreover, we note that the Colombian Government has recently authorized AIA a license to operate between Colombia and Miami.

¹⁵ AIA Brief at 13-14; AIA April 2, 1996 Answer at 12; AIA April 10, 1996 Surreply at 1.

¹⁶ Southern Direct Exhibits SAT-321-322; AIA Direct Exhibits AIA-404, and AIA-301 (as corrected 9/13/95)

No objections were received to the selection of Southern Air Transport. Evergreen, however, objected to the selection of Tower, arguing that it would offer greater capacity than Tower and more service to New York. We are unpersuaded by Evergreen's arguments. The capacity proposed by the two carriers is comparable, and Evergreen's slightly greater capacity does not warrant modification of our tentative decision, particularly taking into consideration the other benefits of Tower's proposal. In this regard, while Evergreen states that it will provide the most service to the underserved New York area, it is Tower that proposes to operate three weekly round trips to New York (JFK). As noted above, Evergreen offers only one round-trip flight to New York; its other two flights would only serve New York in one direction. (See Appendix A of Order 96-3-39). Furthermore, Tower currently provides weekly scheduled combination services to Brazil and in our estimation is in a better position to step in quickly to implement service should Polar not institute its service. Evergreen also claims that it offers connecting service from the midwestern U.S. and Asia, whereas Tower would not. Evergreen's exhibits, however, do not substantiate or quantify such service.¹⁷

Other Issues

a. Aircraft Issue

Southern argues that AIA may not be able to implement its proposal due to an FAA directive regarding certain B747 aircraft that were converted from passenger to all-cargo configuration. AIA acknowledges this aircraft issue on the record but emphasizes that the matter is of a temporary nature and will have little impact, if any, on its long-term ability to operate its proposed Brazil services.¹⁸ AIA has specifically stated that it has sufficient aircraft to perform the proposed service.¹⁹ In these circumstances, we see no basis here to disturb our decision.

b. Dormancy condition

We note that there were no objections to the Department's tentative conclusions regarding imposition of a dormancy condition on the frequency allocations awarded here as well as on the frequency allocations of incumbents in the marketplace now. Therefore, within ninety days of the date of service of this order, frequencies of the incumbent all-cargo carriers already in the marketplace that remain unused automatically revert to the Department for reallocation.²⁰ Thereafter, if any frequency is not used for a ninety-day period, that frequency will also revert to the Department for reallocation. The ninety-day period for the dormancy provision for allocations to the carriers selected in this proceeding will begin on the date the selected carrier commences its scheduled services.

¹⁷ In its direct exhibits, Evergreen merely states that its "forecast ... does not include any interline traffic from Asia carriers which Evergreen has close ties with and which are currently carrying significant amounts of Brazil-destined freight into New York, nor does it assume any traffic from Evergreen's own Hong Kong service, although Evergreen expects this higher yielding traffic to supplement the U.S.-Brazil traffic." (EZ-304)

¹⁸ AIA April 2, 1996 Answer, page 13.

¹⁹ See Direct Exhibit AIA-135 for a summary of AIA's fleet.

²⁰ Carriers should notify the Director, Office of International Aviation, by letter of dormant frequencies and should serve that letter upon other U.S. all-cargo carriers in the U.S.-Brazil market.

c. Other Certificate Requests

We note that although this proceeding sought applications for U.S.-Brazil authority only, Tower Air in its original application seeks authority outside the purview of this case, specifically to serve Chile, Colombia, Paraguay, Uruguay, and Venezuela. However, Tower does not propose to serve those points in conjunction with its Brazil service. Therefore, we will dismiss without prejudice those portions of Tower's application which do not relate to its U.S.-Brazil proposal.

ACCORDINGLY,

1. We make final our tentative conclusions in Order 96-3-39;
2. We select American International Airways, Inc., for award of primary authority to engage in foreign scheduled all-cargo transportation between Miami and points in Brazil via Bogota, Colombia, as described in this order and issue it a certificate of public convenience and necessity in the form attached;
3. We select Polar Air Cargo, Inc. for award of primary authority to engage in foreign scheduled all-cargo transportation between the United States and Brazil as described in this order and issue it a certificate of public convenience and necessity in the form attached;
4. We select Southern Air Transport for backup authority to the American International award and issue to it a certificate of public convenience and necessity in the form attached;
5. We select Tower Air for backup authority to the Polar award and issue to it a certificate of public convenience and necessity in the form attached;
6. We allocate American International Airways, Inc. 6.5 weekly frequencies to perform its operations; and Southern Air Transport 6.5 frequencies should its backup certificate become activated;
7. We allocate Polar Air Cargo, Inc. 3 weekly frequencies to conduct its authorized U.S.-Brazil operations; and Tower Air 3 weekly frequencies should its backup certificate become activated;
8. The frequencies allocated here as well as frequencies previously allocated to incumbents (Federal Express and Challenge Air Cargo)²¹ are subject to a 90-day dormancy condition wherein frequencies not used by a carrier for any 90-day period will automatically expire and will revert back to the Department for reallocation;²²

²¹ See Orders 91-8-4 and 91-9-12 for Federal Express' allocations, and Order 92-5-3 for Challenge Air Cargo's allocation.

²² The dormancy period for new frequencies awarded here will begin upon the selected carrier's inauguration of service. The dormancy period for incumbent carrier frequencies will begin on the date of service of this order.

9. Unless disapproved by the President of the United States under 49 U.S.C. 41307, this order and the attached certificates shall become effective on the 61st day after its submission for section 41307 review or upon the date of receipt of advice from the President or his designee under Executive Order 12597 and implementing regulations that the President does not intend to disapprove the Department's order under that section, whichever occurs earlier;²³

10. We dismiss without prejudice those portions of Tower Air's application which do not relate to U.S.-Brazil authority at issue in this proceeding;

11. We grant the separate motions of American International Airways, Inc., and Southern Air Transport to file otherwise unauthorized documents; and

12. We shall serve this order on American International Airways, Inc.; Amerijet International, Inc.; Arrow Air, Inc.; Challenge Air Cargo; DHL Airways, Inc.; Evergreen International Airlines, Inc.; Federal Express Corporation; Fine Airlines, Inc.; Florida West International Airways, Inc.; Millon Air, Inc.; Polar Air Cargo, Inc.; Southern Air Transport, Inc.; Tower Air, Inc.; the City of Charlotte, North Carolina; the Hulman Regional Airport Authority; the Commonwealth of Puerto Rico; the International Freight Forwarders and Custom Brokers Association of Charlotte, North Carolina; the Indianapolis Airport Authority; the Ambassador of Brazil in Washington, D.C., the Federal Aviation Administration, and the U.S. Department of State (Office of Aviation Negotiations).

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this notice is available on the World Wide Web at
<http://www.dot.gov/dotinfo/general/orders/aviation.html>*

²³ This order was submitted for section 41307 review on May 30, 1996.

On June 5, 1996, we received notification that the President's designee, under Executive Order 12597 and implementing regulations, did not intend to disapprove the Department's order.

Summary of Responsive Pleadings

Amerijet argues that the Department used different decisional criteria from those set forth in the instituting order; that the Department erred in not examining the entire U.S.-Brazil market (including services of scheduled and charter carriers); and that the Department ignored the availability of new service opportunities to intermediate points and new terminal points in Brazil available under Amerijet's proposal. Amerijet maintains that new wide-body service in the major city-pair markets could be provided through the existing and expanded number of all-cargo charter services to be introduced in the markets. Amerijet adds that to the extent that the applicants' service proposals have changed since the submissions of documents in this case, the Department should not finalize its tentative findings and conclusions until the questions are resolved.

Millon argues that the Department discriminated against applicants based on the make or type of aircraft operated and points served, and failed to consider two significant factors, experience and commitment to the market. Millon further argues that the Department did not give its proposal adequate consideration, claiming that the Department made numerous errors of fact concerning its application. As for the Department's tentative selection of AIA for a primary award, Millon argues that AIA is not a player in the U.S.-Brazil all-cargo market; that the wide geographic scope of AIA's network will prove a liability; and that the AIA feeder system and its intermodal capability is not a distinguishing factor on which to select AIA.

Evergreen argues that the Department's decision to select AIA and Polar on the basis of their proposed service to points other than New York and Miami is fundamentally flawed since New York-Brazil is by far the largest unserved US-Brazil market and the new points AIA and Polar propose to serve are minor U.S.-Brazil traffic points. Evergreen states that the AIF network, a benefit on which the Department relied, may be less effective than it was purported to be last fall because it has lost one of its major customers.¹ Concerning Polar, Evergreen argues that even with Polar's assertion that it will operate services between Brazil and Los Angeles, Chicago, New York and Miami, neither DOT nor the other applicants knows what portion of its service proposal Polar will operate or whether such services would be viable or offer any public benefits. Evergreen maintains that its proposal to concentrate three frequencies on the major, unserved New York-Brazil market is clearly superior to Polar's proposal. Finally, Evergreen states that the Department must overturn its tentative decision to select Tower as a backup carrier to the Polar award, arguing that Evergreen is a cargo specialist whereas Tower is a passenger carrier; that Evergreen's proposal is superior to Tower's; and that Evergreen, like Tower, has been active in the Brazil market and would also be in a position to implement quickly services should it be awarded backup authority and the primary carrier not begin or continue service.

Southern supports the Department's tentative decision of selecting carriers proposing wide-body B-747 freighter service to Brazil. However, it argues that the selection of AIA should

¹ "AIF" is a division of American International Airlines. See discussion at page 4.

be reversed and Southern should be selected instead as the primary carrier for allocation of 6.5 Brazil frequencies. Southern maintains that the Department's decision is incorrect as a matter of law, policy, and fact, stating that the sole basis for the Department's selecting AIA is a belief that AIA is the only applicant proposing to provide hub and integrated, intermodal service to Brazil and to offer new single-plane carrier service to many cities through its network and hub operations. Moreover, it argues that the Department failed to address two additional issues Southern raised during the course of the proceeding: AIA's ability to operate scheduled service from Bogota, Colombia, to Miami and its ability to operate six times per week with B-747-100/200 service due to an FAA Airworthiness Directive.² On the aircraft issue, Southern argues that AIA does not have enough aircraft to operate its proposed service pattern because several of its aircraft have been grounded by the FAA. On the service issue, Southern contends that Colombia will not permit AIA to operate U.S.-Colombia services and therefore, AIA's proposal is not attainable.

In response, AIA and Polar contend that no objector has raised any new arguments to cause the Department to reach a different final decision, and they urge the Department to affirm its tentative decisions and to award each the authority as set forth in Order 96-3-39. AIA states that the Department recognized the public benefit AIA's proposal provides when it noted AIA would provide the most frequencies, would offer new and improved service to more U.S. cities than any other applicant; would operate single-plane service to Miami and New York and would offer new single-carrier service to many other cities through its network services and hub operations at Terre Haute and Charlotte and would offer more capacity than any other applicant except one. AIA maintains that although Southern has operated certain Brazilian charter services in conjunction with its scheduled Miami-Bogota services, it would also have to request permission of the Colombian Government to perform a scheduled triangular routing and, therefore, is in no better position than AIA to provide assurances that Colombia would grant such authority or to implement its service proposal in this proceeding.³ AIA further states that it is prepared to commence its Brazil service without Colombia operating rights if necessary; that like Southern, AIA does not propose to carry local Brazil-Colombia traffic; and that AIA should also be able to operate scheduled service on a triangular routing upon approval by the Colombian government. As to the aircraft issue, it contends that it has sufficient aircraft in its fleet and that the temporary grounding of two of its aircraft will not impact AIA's proposed services.

² Southern states that certain passenger B747 aircraft converted to all-cargo use have been grounded by the FAA due to safety concerns.

³ Southern maintains that AIA is incorrect in asserting that Southern would require permission from the Colombian Government to perform its scheduled triangular routing. It acknowledges, however, that "Southern has always operated the Brazil-Colombia sector as a ferry leg and would continue to do so if awarded Brazil scheduled authority until such time as the Colombian authorities comply with the bilateral agreement and permit full traffic operations between Brazil and Colombia" (emphasis added). April 9, 1996 Reply of Southern at footnote 2.



**Experimental Certificate
of Public Convenience and Necessity**

**For Route
695**

This Certifies That

AMERICAN INTERNATIONAL AIRWAYS, INC.

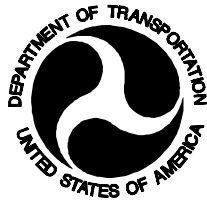
is authorized, subject to the provisions of Subtitle VII of Title 49 of United States Code, the orders, rules, and regulations issued thereunder, and the attached Terms, Conditions, and Limitations, to engage in foreign air transportation of property and mail.

This Certificate is not transferable without the approval of the Department of Transportation.

By Direction of the Secretary

**Issued by Order 96-6-12
On May 30, 1996
Effective on June 5, 1996
Affairs**

**Charles A. Hunnicutt
Assistant Secretary for
Aviation and International**



Terms, Conditions, and Limitations

AMERICAN INTERNATIONAL AIRLINES, INC.

For Route 695

is authorized to engage in foreign air transportation of property and mail:

Between the terminal point Miami, Florida; the intermediate point Bogota, Colombia; and the coterminal points Manaus, São Paulo, Recife, and Rio de Janeiro, Brazil.

This authority is subject to the following provisions:

- (1) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.
- (2) The holder is not authorized to carry passengers (other than cargo attendants accompanying freight shipments).
- (3) The holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate is subject to compliance with such treaties and agreements and with any orders of the Department of Transportation issued under them or for the purpose of requiring compliance with them.
- (4) The exercise of the authority granted here is subject to the holder's first obtaining from the appropriate foreign governments such operating rights as may be necessary.
- (5) The holder's authority under this certificate is effective only to the extent that such operations are also authorized by the Federal Aviation Administration.
- (6) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).
- (7) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 of the United States Code or the Department's regulations shall be sufficient grounds to revoke this certificate.
- (8) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n)), it must first comply with the requirements of 14 CFR 204.5.

(9) In the event that the holder commences but subsequently ceases all operations for which it was found "fit, willing, and able," its authority under this certificate shall be suspended under the terms of 14 CFR 204.7 and the holder may not recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

(10) The holder acknowledges that this certificate is granted to determine if the holder's projected services, efficiencies, methods, rates, fares, charges, or other projected results will, in fact, materialize and remain for a sustained period of time, and to determine whether the holder will provide the innovative and low-priced air transportation it proposed in its application for this authority.

This certificate shall become effective June 5, 1996 . It shall expire 60 days after it becomes effective; provided, however, that if the holder inaugurates service under this certificate on or before that date, the authorization will continue in effect until five years after its effective date unless the Department earlier suspends, modifies or deletes the authority.



**Experimental Certificate
of Public Convenience and Necessity**

**For Route
696**

This Certifies That

POLAR AIR CARGO, INC.

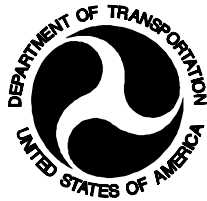
is authorized, subject to the provisions of Subtitle VII of Title 49 of United States Code, the orders, rules, and regulations issued thereunder, and the attached Terms, Conditions, and Limitations, to engage in foreign air transportation of property and mail.

This Certificate is not transferable without the approval of the Department of Transportation.

By Direction of the Secretary

**Issued by Order 96-6-12
On May 30, 1996
Effective on June 5, 1996
Affairs**

**Charles A. Hunnicutt
Assistant Secretary for
Aviation and International**



Terms, Conditions, and Limitations

POLAR AIR CARGO, INC.

**For Route
696**

is authorized to engage in foreign air transportation of property and mail:

Between the coterminal points Miami, Florida, and Los Angeles, California; the intermediate points Curacao, Netherlands Antilles; Santiago, Chile; Barranquilla, Colombia; and Panama City, Panama; and the coterminal points Manaus, Rio de Janeiro, and São Paulo, Brazil.

This authority is subject to the following provisions:

- (1) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.
- (2) The holder is not authorized to carry passengers (other than cargo attendants accompanying freight shipments).
- (3) The holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate is subject to compliance with such treaties and agreements and with any orders of the Department of Transportation issued under them or for the purpose of requiring compliance with them.
- (4) The exercise of the authority granted here is subject to the holder's first obtaining from the appropriate foreign governments such operating rights as may be necessary.
- (5) The holder's authority under this certificate is effective only to the extent that such operations are also authorized by the Federal Aviation Administration.
- (6) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).
- (7) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 of the United States Code or the Department's regulations shall be sufficient grounds to revoke this certificate.

(8) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n)), it must first comply with the requirements of 14 CFR 204.5.

(9) In the event that the holder commences but subsequently ceases all operations for which it was found "fit, willing, and able," its authority under this certificate shall be suspended under the terms of 14 CFR 204.7 and the holder may not recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

(10) The holder acknowledges that this certificate is granted to determine if the holder's projected services, efficiencies, methods, rates, fares, charges, or other projected results will, in fact, materialize and remain for a sustained period of time, and to determine whether the holder will provide the innovative and low-priced air transportation it proposed in its application for this authority.

This certificate shall become effective June 5, 1996 . It shall expire 60 days after it becomes effective; provided, however, that if the holder inaugurates service under this certificate on or before that date, the authorization will continue in effect until five years after its effective date unless the Department earlier suspends, modifies or deletes the authority.



**Experimental Certificate
of Public Convenience and Necessity
(Backup Award)
For Route
697**

This Certifies That

SOUTHERN AIR TRANSPORT, INC.

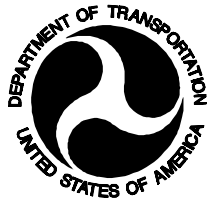
is authorized, subject to the provisions of Subtitle VII of Title 49 of United States Code, the orders, rules, and regulations issued thereunder, and the attached Terms, Conditions, and Limitations, to engage in foreign air transportation of property and mail.

This Certificate is not transferable without the approval of the Department of Transportation.

By Direction of the Secretary

**Issued by Order 96-6-12
On May 30, 1996
Effective on (See Attached)
Affairs**

**Charles A. Hunnicutt
Assistant Secretary for
Aviation and International**



Terms, Conditions, and Limitations

SOUTHERN AIR TRANSPORT, INC.

For Route
697

is authorized to engage in foreign air transportation of property and mail:

Between the coterminal points Miami, Florida, and Los Angeles, California; the intermediate point Bogota, Colombia; and the coterminal points Manaus, São Paulo, and Rio de Janeiro, Brazil.

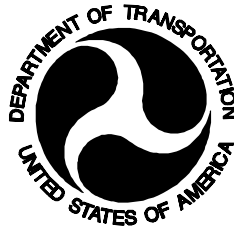
This authority is subject to the following provisions:

- (1) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.
- (2) The holder is not authorized to carry passengers (other than cargo attendants accompanying freight shipments).
- (3) The holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate is subject to compliance with such treaties and agreements and with any orders of the Department of Transportation issued under them or for the purpose of requiring compliance with them.
- (4) The exercise of the authority granted here is subject to the holder's first obtaining from the appropriate foreign governments such operating rights as may be necessary.
- (5) The holder's authority under this certificate is effective only to the extent that such operations are also authorized by the Federal Aviation Administration.
- (6) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).
- (7) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 of the United States Code or the Department's regulations shall be sufficient grounds to revoke this certificate.
- (8) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n)), it must first comply with the requirements of 14 CFR 204.5.

(9) In the event that the holder commences but subsequently ceases all operations for which it was found "fit, willing, and able," its authority under this certificate shall be suspended under the terms of 14 CFR 204.7 and the holder may not recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

(10) The holder acknowledges that this certificate is granted to determine if the holder's projected services, efficiencies, methods, rates, fares, charges, or other projected results will, in fact, materialize and remain for a sustained period of time, and to determine whether the holder will provide the innovative and low-priced air transportation it proposed in its application for this authority.

This certificate shall not become effective until the certificate authority of American International, Inc. in the Miami-Brazil market has expired or has been deleted or suspended, and it shall expire June 5, 1997; provided, however, that if this authority becomes effective before that date, it shall not expire until June 5, 2001, unless the holder fails to inaugurate service within 60 days of that effective date, in which case this certificate will expire on the 61st day.



**Experimental Certificate
of Public Convenience and Necessity
(Backup Award)
For Route
698**

This Certifies That

TOWER AIR, INC.

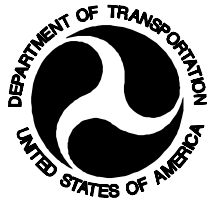
is authorized, subject to the provisions of Subtitle VII of Title 49 of United States Code, the orders, rules, and regulations issued thereunder, and the attached Terms, Conditions, and Limitations, to engage in foreign air transportation of property and mail.

This Certificate is not transferable without the approval of the Department of Transportation.

By Direction of the Secretary

**Issued by Order 96-6-12
On May 30, 1996
Effective on (See Attached)
Affairs**

**Charles A. Hunnicutt
Assistant Secretary for
Aviation and International**



Terms, Conditions, and Limitations

TOWER AIR, INC.

For Route

698

is authorized to engage in foreign air transportation of property and mail:

Between the terminal point Miami, Florida, and the coterminal points Manaus, São Paulo, and Rio de Janeiro, Brazil.

This authority is subject to the following provisions:

- (1) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.
- (2) The holder is not authorized to carry passengers (other than cargo attendants accompanying freight shipments).
- (3) The holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate is subject to compliance with such treaties and agreements and with any orders of the Department of Transportation issued under them or for the purpose of requiring compliance with them.
- (4) The exercise of the authority granted here is subject to the holder's first obtaining from the appropriate foreign governments such operating rights as may be necessary.
- (5) The holder's authority under this certificate is effective only to the extent that such operations are also authorized by the Federal Aviation Administration.
- (6) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).
- (7) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 of the United States Code or the Department's regulations shall be sufficient grounds to revoke this certificate.
- (8) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n)), it must first comply with the requirements of 14 CFR 204.5.

(9) In the event that the holder commences but subsequently ceases all operations for which it was found "fit, willing, and able," its authority under this certificate shall be suspended under the terms of 14 CFR 204.7 and the holder may not recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

(10) The holder acknowledges that this certificate is granted to determine if the holder's projected services, efficiencies, methods, rates, fares, charges, or other projected results will, in fact, materialize and remain for a sustained period of time, and to determine whether the holder will provide the innovative and low-priced air transportation it proposed in its application for this authority.

This certificate shall not become effective until the certificate authority of Polar Air Cargo, Inc. in the Miami/Los Angeles-Brazil market has expired or has been deleted or suspended, and it shall expire; June 5, 1997 provided, however, that if this authority becomes effective before that date, it shall not expire until June 5, 2001, unless the holder fails to inaugurate service within 60 days of that effective date, in which case this certificate will expire on the 61st day.